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3 **UNITED STATES DISTRICT COURT**4 **DISTRICT OF NEVADA**

5 MICHAEL STERNBERG, et al.,

Case No.: 2:23-cv-01466-APG-EJY

6 Plaintiffs

**Order Granting California Judicial Branch
Defendants' Motion to Dismiss**

7 v.

[ECF No. 96]

8 SHELLEY WARNECK, et al.,

9 Defendants

10 Plaintiff Michael Sternberg sues 75 individuals and entities regarding events arising out
11 of a custody dispute with the mother of his children, defendant Shelley Warneck. In this order, I
12 address the motion to dismiss filed by the Supreme Court of California; the California Court of
13 Appeal, Sixth Appellate District; the Superior Court of California, County of Santa Clara; and
14 seven judges who sit on those courts: Patricia Guerrero; Mary Greenwood; Beth McGowen;
15 Brooke Blecher; Roberta Hayashi; Cindy Hendrickson; and Thomas Kuhnle (collectively, the
16 California Judicial Branch Defendants). The California Judicial Branch Defendants argue this
17 court lacks personal jurisdiction over them, each of them is entitled to judicial immunity, and the
18 Eleventh Amendment bars claims against them in federal court. Sternberg opposes.

19 The parties are familiar with the first amended complaint's (FAC) allegations, so I repeat
20 them here only as necessary to resolve the motion to dismiss. I grant the motion because this
21 court lacks personal jurisdiction over these defendants.

22 **I. ANALYSIS**

23 "When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears
the burden of demonstrating that the court has jurisdiction over the defendant." *Pebble Beach
Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). If the motion to dismiss is based on written

1 materials rather than an evidentiary hearing, I must determine whether the plaintiff's "pleadings
2 and affidavits make a prima facie showing of personal jurisdiction." *Schwarzenegger v. Fred*
3 *Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quotation omitted). In deciding whether
4 the plaintiff has met his burden, I must accept as true the complaint's uncontroverted allegations.
5 *Id.*

6 "The general rule is that personal jurisdiction over a defendant is proper if it is permitted
7 by a long-arm statute and if the exercise of that jurisdiction does not violate federal due process."
8 *Pebble Beach Co.*, 453 F.3d at 1154. Nevada's long-arm statute permits the exercise of
9 jurisdiction on any basis consistent with federal due process. Nev. Rev. Stat. § 14.065(1). Due
10 process requires that to exercise personal jurisdiction over a defendant, the defendant must "have
11 certain minimum contacts with the forum state such that the maintenance of the suit does not
12 offend traditional notions of fair play and substantial justice." *Ranza v. Nike, Inc.*, 793 F.3d 1059,
13 1068 (9th Cir. 2015) (quotation omitted). Personal jurisdiction over a defendant may be based
14 on general or specific jurisdiction. *Id.*

15 **A. General Personal Jurisdiction**

16 If a court has general jurisdiction over a defendant, then the plaintiff may bring any claim
17 he or she has against that defendant regardless of whether the claim relates to the defendant's
18 activities in the forum state. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358
19 (2021). "Because the assertion of judicial authority over a defendant is much broader in the case
20 of general jurisdiction than specific jurisdiction, a plaintiff invoking general jurisdiction must
21 meet an exacting standard for the minimum contacts required." *Ranza*, 793 F.3d at 1069
22 (quotation omitted). A court may assert general jurisdiction over defendants when their
23 "affiliations with the State are so continuous and systematic as to render them essentially at

1 home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919
2 (2011) (quotation omitted). “For an individual, the paradigm forum for the exercise of general
3 jurisdiction is the individual’s domicile.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). An
4 entity is similarly subject to general jurisdiction based on “an equivalent place” where the entity
5 “is fairly regarded as at home.” *Id.* (quotation omitted). Although these are not necessarily the
6 only means for a defendant to be subject to general jurisdiction, the defendant’s contacts with the
7 forum must be “so substantial and of such a nature as to justify suit on causes of action arising
8 from dealings entirely distinct from those activities.” *Id.* at 137-38 (simplified).

9 The California Judicial Branch Defendants argue there is no general jurisdiction over
10 them because Sternberg has not alleged facts showing they had continuous and systematic
11 contacts with Nevada such that they may be deemed to be at home in Nevada. They assert that
12 they reside in and are judicial officers of California or are judicial arms of California, and the
13 acts about which Sternberg complains involve their actions taken in a family court case that
14 Warneck filed in California.

15 Sternberg responds that there is general jurisdiction because the California judiciary has
16 continuous and systematic contacts with Nevada due to their participation in enforcing two
17 uniform Acts that both California and Nevada have enacted. First, he asserts that because the
18 judges relied on the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to
19 assert jurisdiction over the children, the judges have continuous contacts with other states,
20 including Nevada, that have enacted that uniform act. He also contends that he was arrested in
21 Nevada under authority of the Uniform Criminal Extradition Act (UCEA), so the California
22 judiciary has continuous and systematic contacts with Nevada by virtue of the mutual agreement
23 between states to enforce that uniform act.

1 The California Judicial Branch Defendants are alleged to be California residents or
 2 entities, taking actions in California litigation, and there are no allegations that they have
 3 continuous and systematic contacts with Nevada such that they are essentially at home in this
 4 state. ECF Nos. 86 through 86-4. The California courts are at home in California. The
 5 California judges are domiciled in California. *See* ECF No. 86-2 at 2 (listing these defendants at
 6 various California addresses). The judges' participation in proceedings under the two uniform
 7 acts does not make them essentially at home in each of the states that enacted similar uniform
 8 acts. By Sternberg's own allegations, the judges preside in California cases, not Nevada cases.
 9 Presiding over California cases that involve non-California litigants and coordinating with other
 10 state courts regarding jurisdiction do not make the judges essentially at home in those other
 11 states. Consequently, there is no basis to exercise general jurisdiction over any of the California
 12 Judicial Branch Defendants.

13 **B. Specific Personal Jurisdiction**

14 The Ninth Circuit has established a three-prong test for analyzing a claim of specific
 15 personal jurisdiction:

- 16 (1) The non-resident defendant must purposefully direct his activities or
 17 consummate some transaction with the forum or resident thereof; or perform
 18 some act by which he purposefully avails himself of the privilege of conducting
 19 activities in the forum, thereby invoking the benefits and protections of its laws;
- 20 (2) the claim must be one which arises out of or relates to the defendant's forum-
 21 related activities; and
- 22 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
 23 *i.e.* it must be reasonable.

21 *Schwarzenegger*, 374 F.3d at 802 (quotation omitted). "The plaintiff bears the burden of
 22 satisfying the first two prongs of the test." *Id.* If he succeeds, then the defendant must "present a
 23

1 compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* (quotation
2 omitted).

3 Under the first prong, “to be subject to specific jurisdiction the defendant must
4 purposefully direct its activities toward the forum state, purposefully avail itself of the privileges
5 of conducting activities there, or engage in some combination thereof.” *Impossible Foods Inc. v.*
6 *Impossible X LLC*, 80 F.4th 1079, 1088 (9th Cir. 2023) (quotation omitted). When the claims at
7 issue are torts and the defendant’s conduct “primarily occurs outside the forum state, [I]
8 generally apply the purposeful direction test and look to whether the defendant expressly aimed
9 acts at the forum state knowing that they would harm the plaintiff there.” *Id.* To purposefully
10 direct conduct at the forum state, “the defendant must have allegedly (1) committed an
11 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows
12 is likely to be suffered in the forum state.” *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th
13 1154, 1162-63 (9th Cir. 2023) (quotation omitted). The defendant’s act may be directed at
14 Nevada “even if it occurred elsewhere.” *Id.* at 1163. In contrast, a defendant purposefully avails
15 herself of the forum state when she “purposefully avails [herself] of the privilege of conducting
16 activities within the forum State, thus invoking the benefits and protections of its laws, and in
17 return submits to the burdens of litigation in the State.” *Id.* (simplified). Because Sternberg’s
18 claims are torts and these defendants’ alleged conduct took place in California, the purposeful
19 direction test is more applicable, but I consider both tests.

20 In analyzing specific jurisdiction, I “focus[] on the relationship among the defendant, the
21 forum, and the litigation.” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014) (simplified). That
22 “relationship must arise out of contacts that the defendant himself creates with the forum State.”
23 *Id.* at 284 (simplified). It cannot be based on the “random, fortuitous, or attenuated contacts” the

1 defendant “makes by interacting with other persons affiliated with the State,” or on the plaintiff’s
2 “unilateral activity.” *Id.* at 286 (simplified). The “defendant’s suit-related conduct must create a
3 substantial connection with the forum State.” *Id.* at 284. Thus, the “analysis looks to the
4 defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who
5 reside there.” *Id.* at 285.

6 The California Judicial Branch Defendants contend they are not subject to specific
7 personal jurisdiction because the FAC does not allege that they purposefully directed any activity
8 at Nevada, and Sternberg’s claims arise out of actions they took (or failed to take) in California.
9 They contend that they have no forum-related conduct, so this court’s exercise of personal
10 jurisdiction over them would be unreasonable.

11 Sternberg responds that he has sufficiently alleged contacts with Nevada because he lives
12 here, his children were twice removed from the state due to a conspiracy between the California
13 Judicial Branch Defendants and Warneck, and defendant Hayashi “actively obstructed justice in
14 a NEVADA courtroom.” ECF No. 118 at 7 (emphasis omitted). Sternberg contends that Hayashi
15 participated in a hearing that took place in the Nevada lawsuit that Sternberg filed against
16 Warneck, during which the two courts sought to determine which one should exercise
17 jurisdiction under the UCCJEA. He states that if I dismiss these defendants, then he would have
18 nowhere else to sue them but in federal court in California, which would unduly burden both him
19 and his rights related to his children.

20 1. California Courts, Guerrero, Greenwood, and McGowen

21 Sternberg has not alleged facts supporting a prima facie case that the Supreme Court of
22 California; the California Court of Appeal, Sixth Appellate District; the Superior Court of
23 California, County of Santa Clara; Patricia Guerrero; Mary Greenwood; or Beth McGowen

1 purposefully directed their actions at Nevada or purposefully availed themselves of Nevada's
2 privileges and protections. Regarding the courts, Sternberg has not alleged any facts that the
3 judicial entities have done so. Regarding the judges, Sternberg's statement of facts does not
4 mention Guerrero, Greenwood, and McGowen. ECF No. 86-3. He mentions Greenwood and
5 McGowen (but not Guerrero) in his list of causes of action. ECF No. 86-4 at 17-19. There, he
6 alleges that Greenwood and McGowen were aware of judicial misconduct but did nothing to stop
7 it, did not report the misconduct under the California Code of Judicial Ethics, and did not follow
8 court rules to address his complaints against other judges. *Id.* at 17-19. But Greenwood and
9 McGowen's alleged failure to act in California to address alleged misconduct by California
10 judges that took place in California does not create any contacts with Nevada, much less the kind
11 of substantial connection required for this court to exercise specific jurisdiction over them. The
12 fact that a Nevada resident is complaining about the alleged misconduct does not suffice to show
13 Greenwood and McGowen expressly aimed their acts or omissions at Nevada or purposefully
14 availed themselves of the State. Consequently, there is no basis to exercise specific jurisdiction
15 over the California courts, Guerrero, Greenwood, and McGowen, so I grant their motion to
16 dismiss.

17 2. Blecher, Hendrickson, and Kuhnle

18 The FAC identifies Blecher, Hendrickson, and Kuhnle as judges with the Santa Clara
19 Superior Court in California. ECF No. 86-2 at 1-2. Each of these judges made rulings at some
20 point during the California custody dispute case. ECF Nos. 86-3 at 8-9, 11-14, 16; 86-4 at 5-9,
21 17, 19, 22. These defendants' rulings as California judges in a California case involving a
22 litigant that happens to live in Nevada are not contacts that these defendants created with
23 Nevada. Sternberg thus has not plausibly alleged that any of these defendants expressly aimed

1 their conduct at Nevada or otherwise created a substantial connection with the State. Even
2 assuming without deciding that an alleged co-conspirator's forum-related contacts could be
3 attributed to these defendants, "[t]he cases are unanimous that a bare allegation of a conspiracy
4 between the defendant and a person within the personal jurisdiction of the court is not enough."
5 *Chirila v. Conforte*, 47 F. App'x 838, 842-43 (9th Cir. 2002) (quotation omitted); *see also*
6 *Underwager v. Channel 9 Australia*, 69 F.3d 361, 364 (9th Cir. 1995) (affirming dismissal for
7 lack of personal jurisdiction because the plaintiff had "allege[d] no facts to even suggest a
8 conspiracy"). Sternberg's conclusory allegations that these defendants conspired with attorneys,
9 each other, or Warneck are insufficient to state a prima facie case that the defendants
10 purposefully directed their actions at Nevada or purposefully availed themselves of Nevada. *See*
11 ECF Nos. 86-3 at 8; 86-4 at 5-9, 17, 19. Moreover, there are no allegations that these defendants
12 had any involvement in Warneck's initial removal of the children from Nevada. Sternberg's
13 unilateral decision to retain the children in Nevada after Kuhnle ordered him to return the
14 children to California does not create a contact between Kuhnle and Nevada. ECF No. 86-3 at
15 14-15. Sternberg could have moved the children to any state and still have been subject to
16 Kuhnle's return order. Sternberg therefore has not made a prima facie showing of personal
17 jurisdiction over Blecher, Hendrickson, or Kuhnle.

18 Even if I had personal jurisdiction over these defendants, all claims against them would
19 be barred by absolute judicial immunity. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991).
20 Sternberg does not plausibly allege that these judges acted "in the complete absence of all
21 jurisdiction," and all their alleged acts were judicial in nature, so Sternberg cannot overcome
22 these defendants' judicial immunity. *See id.* To the extent absolute judicial immunity does not
23 apply to declaratory relief, I would decline, in my discretion, to entertain a suit for declaratory

1 relief in these circumstances. Sternberg’s challenges to determinations made in state family
2 court proceedings would needlessly entangle this court in state law issues in an area that is
3 traditionally left to the states. *See Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 151 (2001)
4 (describing family law as an “area[] of traditional state regulation”). Additionally, it appears
5 Sternberg is forum shopping after receiving undesirable results in the state proceedings, which
6 should be discouraged. *See Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998). I
7 therefore grant Blecher, Hendrickson, and Kuhnle’s motion to dismiss.

8 3. Hayashi

9 Sternberg alleges that Hayashi participated in a jurisdictional conference with the Nevada
10 court to determine which court would exercise jurisdiction over the custody dispute. ECF No.
11 86-3 at 3-4. He alleges that during that conference, Hayashi admitted to having read *ex parte*
12 declarations submitted to her by Warneck and Warneck’s attorney, Tristan Aeschleman. *Id.* at 4.
13 According to the FAC, Hayashi “aggressively advocated” for Warneck during the jurisdictional
14 conference based on these declarations and denied Sternberg’s request for an opportunity to
15 respond. *Id.* The Nevada judge allegedly acquiesced to Hayashi’s “aggressive demeanor” and
16 ceded jurisdiction to the Santa Clara County court, even though Sternberg, Warneck, and the
17 children did not live there. *Id.*

18 The FAC alleges that Hayashi thereafter “conspired” with Aeschelman and Sternberg’s
19 own attorney “to change the track of [the custody] case from a brief focused assessment and a
20 jurisdictional analysis to a full blow[n] custody evaluation” without notice to Sternberg and
21 without his consent. *Id.* at 6-7. He also alleges that Hayashi, Aeschelman, and Sternberg’s
22 lawyer took various actions in the custody litigation without notice to him and without his
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1 consent. *Id.* at 7. Hayashi thereafter ruled against Sternberg several times. *Id.* at 9-10. Hayashi
2 also allegedly twice denied Sternberg’s motions to disqualify her. *Id.* at 11.

3 Although these allegations are more substantial than those against the other judges,
4 Sternberg has not plausibly alleged a prima facie case of specific personal jurisdiction over
5 Hayashi in Nevada. The FAC states that after Sternberg brought the Nevada custody lawsuit, the
6 Nevada court initiated the jurisdictional conference that Hayashi participated in due to the need
7 to determine which court would preside over the custody dispute. *See* ECF No. 86-3 at 4 (stating
8 that the Nevada judge “decided to hold a jurisdictional conference with the Santa Clara County,
9 CA court”). Hayashi thus did not direct her conduct at Nevada. Rather, her contact with Nevada
10 was merely fortuitous because a litigant in a California case over which Hayashi presided lived
11 in Nevada and wanted the custody case to proceed there instead of in California. Additionally,
12 Hayashi’s participation in a single jurisdictional conference is too attenuated to support personal
13 jurisdiction. Hayashi could not have reasonably expected to be haled into court in Nevada
14 merely by participating in such a conference. *See World-Wide Volkswagen Corp. v. Woodson*,
15 444 U.S. 286, 297 (1980) (stating that the critical inquiry is whether “the defendant’s conduct
16 and connection with the forum State are such that he should reasonably anticipate being haled
17 into court there”). The remainder of Hayashi’s actions while she presided over the custody case
18 took place in California. Her rulings in a California child custody dispute in which one of the
19 litigants happens to reside in Nevada do not create substantial connections with Nevada
20 sufficient to support personal jurisdiction here. Additionally, Sternberg’s conclusory allegations
21 that Hayashi conspired with Warneck, Aeschelman, and Sternberg’s own attorneys do not suffice
22 to establish personal jurisdiction either. I therefore dismiss Sternberg’s claims against Hayashi
23 for lack of personal jurisdiction.

1 Even if I had personal jurisdiction over Hayashi, all claims against her would be barred
2 by absolute judicial immunity. *See Mireles*, 502 U.S. at 11-12. As with the other judges,
3 Sternberg does not plausibly allege that Hayashi acted in the complete absence of all jurisdiction,
4 and all her alleged acts were judicial in nature, so Sternberg cannot overcome Hayashi's absolute
5 judicial immunity with his allegations. To the extent absolute judicial immunity does not apply
6 to declaratory relief, I would decline to entertain a suit for declaratory relief in these
7 circumstances for the same reasons discussed above. I therefore grant Hayashi's motion to
8 dismiss.

9 **C. Jurisdictional Discovery**

10 Sternberg requests jurisdictional discovery if I am inclined to grant the motion to dismiss.
11 However, Sternberg offers no basis for suspecting that jurisdictional discovery would change the
12 outcome. *See Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (stating that a plaintiff
13 seeking jurisdictional discovery must provide some basis to believe that discovery will lead to
14 relevant evidence). I therefore deny the request to conduct jurisdictional discovery. I dismiss
15 Sternberg's claims against the California Judicial Branch Defendants for lack of personal
16 jurisdiction and without prejudice to him pursuing his claims in California or some other
17 appropriate forum. Although Sternberg contends that it would be burdensome for him to sue
18 these defendants in California, the burden on a plaintiff to litigate elsewhere is not a factor I
19 consider in determining whether I have personal jurisdiction over a defendant. *Walden*, 571 U.S.
20 at 284 ("Due process limits on the State's adjudicative authority principally protect the liberty of
21 the nonresident defendant—not the convenience of plaintiffs or third parties.").

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1 **II. CONCLUSION**

2 I THEREFORE ORDER that the California Judicial Branch Defendants' motion to
3 dismiss **(ECF No. 96) is GRANTED**. The following defendants are dismissed for lack of
4 personal jurisdiction, without prejudice to Sternberg suing them in another appropriate forum:

5 The Supreme Court of California;

6 The California Court of Appeal, Sixth Appellate District;

7 The Superior Court of California, County of Santa Clara;

8 Patricia Guerrero;

9 Mary Greenwood;

10 Beth McGowen;

11 Brooke Blecher;

12 Cindy Hendrickson;

13 Thomas Kuhnle; and

14 Roberta Hayashi.

15 DATED this 3rd day of July, 2024.

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17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE
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